

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEILEE FANT, et al.

Plaintiffs,

v.

CITY OF FERGUSON, MISSOURI,

Defendant.

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) Case. No. 4:15-CV-00253-AGF
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**JOINT MOTION FOR APPROVAL OF CLASS NOTICE AND NOTICE OF
DISMISSAL OF DECLARATORY AND INJUNCTIVE CLAIMS**

Pursuant to this Court's Amended Case Management Order (ECF No. 540), the Parties hereby submit their proposed Class Notice and related documents, as well as a notice of dismissal of the claims brought on behalf of Declaratory and Injunctive Class certified by the Court on that same date. In support, the Parties state as follows:

1. On June 9, 2022, this Court certified the following Classes, hereafter referred to as "the Classes," under Fed. R. Civ. P. 23(b)(3):

- (1) Bearden Class: All persons who have, at any time since February 8, 2010, been kept in jail by the City of Ferguson for failing to pay a fine, fee, bond, surcharge, or cost, without an inquiry into their ability to pay (Count One);
- (2) Modified Gerstein Class (a subclass of the Bearden Class): All persons who have, at any time since February 8, 2010, been held in jail by the City of Ferguson after a warrantless arrest with no finding of probable cause by a neutral magistrate for their arrest and continued detention (Count Seven);
- (3) Warrant Class (a subclass of the Bearden Class): All persons who have, at any time since February 8, 2010, been held in jail by the City of Ferguson after being arrested on a warrant issued by the City (Count Three);
- (4) Post-Judgment Class (a subclass of the Bearden class): All persons who have, at any time since February 8, 2010, been jailed by the City of Ferguson because of their non-payment in connection with a prior judgment (Counts Two, Five, and Six);

- (5) Jail Conditions Class: All persons who, at any time since February 8, 2010, were held in the City of Ferguson jail (Count Four); and
- (6) Modified Declaratory and Injunctive Class: All persons who owe or will incur debts to the City of Ferguson from fines, fees, costs, or surcharges arising from judgments in cases prosecuted by the City (Counts One, Two, Three, Four, Five, Six, and Seven).

ECF No. 519 at 45-47.

2. On June 28, 2022, this Court ordered that the Parties fully brief “mootness, the appropriateness of declaratory and injunctive relief, and/or appropriate end-dates for the Rule 23(b)(3) classes.” ECF No. 524, ¶ 2. The Parties filed a Joint Motion for Entry of Stipulated Order as to Class End-Dates and Declaratory and Injunctive Relief on August 18, 2022, requesting that (1) the Court set September 30, 2017 as the end date for the five Rule 23(b)(3) Classes; and (2) that the Court preliminarily approve Plaintiffs’ proposal to voluntarily dismiss their claims for declaratory and injunctive relief on behalf of themselves and all Classes. ECF No. 534.

3. On August 19, 2022, this Court partly granted the parties’ Joint Motion for Entry of Stipulated Order as to Class End-Dates and Declaratory and Injunctive relief, setting an end date of September 30, 2017 for the *Bearden*, Modified *Gerstein*, Warrant, and Post-Judgment Classes, ordering the Parties to confer regarding the application of Federal Rule of Civil Procedure 23(e) to the proposed voluntary dismissal. ECF No. 535 at 1. The Court, however, did not set an end date for the Jail Conditions Class. *Id.* at 1-2. The Parties’ have drafted this Motion in accordance with the assumption that the end-date for the Jail Conditions Class is also September 30, 2017, the date the City of Ferguson jail permanently closed, in accordance with the Parties’ stipulation that this would be the end-date for all five of the Rule 23(b)(3) Classes. ECF No. 534. The Court also directed the Parties to “promptly meet and confer regarding the application of Federal Rule of Civil

Procedure 23(e) to [the proposed] voluntary dismissal, and . . . by no later than September 9, 2022, file a notice advising the Court of their proposed procedures to comply with Rule 23. ECF No. 535 at 2.

4. On September 9, 2022, the Parties submitted a Joint Proposed Case Management Order and Notice of Proposed Procedure for Voluntary Dismissal of Prospective Claims. “To minimize delay, confusion, and expense, the parties propose[d] that class members be alerted to their rights to object by the same communications that will notify them of certification following the parties’ upcoming mediation on October 27, 2022.” ECF No. 538 at 2, ¶ 1.

5. On September 13, 2022, this Court ordered the Parties to file “a joint proposed Class Notice for each certified class that complies in all respects with Fed. R. Civ. P. 23(c)(2) and provides the respective class members the best notice that is practicable under the circumstances.” ECF No. 540 at 2, ¶ 3. The Court also ordered that “[a]ny disagreements regarding the contents of these notices shall be submitted with the joint proposal.” *Id.* The Court also preliminarily approved the Parties’ stipulated voluntary dismissal of the Modified Declaratory and Injunctive Class and ordered “a joint proposed Class Notice with respect to the voluntary dismissal of the Modified Declaratory and Injunctive Class that complies in all respects with Fed. R. Civ. P. 23(e) and provides the class members all required information under this Rule.” *Id.* at 2.

6. The only area of disagreement between the Parties is whether individuals who receive the Class Notice should be able to opt out of the *Bearden* Classes without opting out of the Jail-Conditions Class and vice versa. Plaintiffs believe potential class members should be able to do so, and Defendant believes they should not. Because this

disagreement required minor edits throughout the Long Form Notice and Opt-Out Form, the Parties are separately attaching their respective Long Form Notices (Plaintiffs' Long Form Notice is attached hereto as Exhibit 1 and Defendant's Proposed Long Form Notice is attached hereto as Exhibit 2). They are also attaching their Proposed Opt-Out Forms (Plaintiffs' Proposed Opt-Out Form is attached hereto as Exhibit 3 and Defendant's Proposed Opt-Out Form is attached hereto as Exhibit 4).

7. In addition to each of their Proposed Long Form Notices and Opt-Out Forms, the Parties propose the following fully agreed upon documents:

- a. **Class Member Short Form Notice**, attached hereto as Exhibit 5;
- b. **Notice of Dismissal of Declaratory and Injunctive Claims**, attached hereto as Exhibit 6; and
- c. **Objection to Dismissal of Declaratory and Injunctive Claims**, attached hereto as Exhibit 7.

The Parties believe that their proposed Class Notice-related documents comply with Fed. R. Civ. P. 23(c)(2)'s and 23(e)'s notice requirements.

WHEREFORE, Plaintiffs request that the Court approve Exhibits 1 and 4, Defendant requests that the Court approve Exhibits 2 and 5, and the Parties request that the Court approve the agreed-upon documents attached hereto as Exhibits 6-7.

Dated: November 21, 2022

Respectfully submitted,

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